

SUBJECT: Amending procedures for an application for a writ of habeas corpus

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Leach, C. Morales, Schatzline

0 nays

SENATE VOTE: On final passage (April 24) — 30 - 0

WITNESSES: None (*considered in a public hearing on May 2*)

BACKGROUND: Concerns have been raised that aspects of the habeas corpus process are unclear, specifically regarding which court should hear and rule upon a habeas corpus application.

DIGEST: SB 1516 would require a writ of habeas corpus to be made returnable to the following counties if the applicant had not been formally charged:

- the county in which the applicant was confined in the sheriff's or another authority's custody;
- the county in which the applicant was alleged to have committed the offense in question; or
- if neither were applicable, the county in which the detention or restraint that provided the basis for the application occurred.

SB 1516 would repeal provisions requiring a writ to be made returnable, after indictment but before conviction, to the county where the offense was committed. Instead, the bill would establish that, in those circumstances, the writ would have to be made returnable to the county in which the charge was pending.

After final conviction in any misdemeanor case, the writ would have to be made returnable to the county in which the applicant was convicted.

SB 1516 would revise procedures for application of a writ of habeas corpus for certain applicants or petitioners. If the applicant was accused of committing a felony or misdemeanor offense and had not been convicted, the applicant or petitioner could apply to the judge of the court in which the indictment or information was pending. If the judge of that court was not available or the indictment or information had not been filed, the applicant could apply to the following judges, as applicable:

- for a felony, any judge with felony jurisdiction in a county to which the writ would be returnable or if such a judge was not available, any judge with felony jurisdiction who presided over a court in a county that adjoined a county to which the writ would be returnable; and
- for a misdemeanor, any judge with criminal jurisdiction in a county court to which the writ would be returnable or if no such judge was available, any judge with criminal jurisdiction who presided over a court in a county that adjoined a county to which the writ would be returnable.

The bill would specify the difference between an applicant and petitioner in regard to a writ of habeas corpus. SB 1516 also would establish that a petitioner who was not the applicant's attorney could not take actions on behalf of the applicant that would constitute the practice of law.

SB 1516 also would require a petitioner to state in the application and under oath that the application was presented with the applicant's knowing and voluntary consent.

The bill would take effect September 1, 2023, and would apply only to an application for a writ of habeas corpus filed on or after that date.